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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-204402

DATE: February 9, 1982

MATTER OF: Optic-Electronic Corp.

**DIGEST:**

1. Where letter authorizing use of Government property by bidder granted permission to use property on "attached list" which was not attached, but contracting officer found that "attached list" had reference to list of property bidder had furnished for rent-free approval which included evaluation factor for rent-free use, there was substantial compliance with IFB requirement that authorization identify Government property authorized for use and state that the authorized use is to be rent free provided an appropriate evaluation factor is added to the bid.
2. Challenge of authority of contracting officer to issue an authorization to bidder for use of Government property is overcome by documentation furnished by agency establishing that the contracting officer was authorized to issue authorization.
3. Contention that no authorization was provided for bidder to use Government property is overcome by written authorization provided before bid opening to contracting officer responsible for immediate IFB by contracting officer having cognizance of the property.
4. Where bid was signed, absence of signature required on accompanying documentation is an irregularity in form rather than substance.

5. Absence of required second copy of documentation is an irregularity in form.
6. Whether bidder will use more Government property to perform contract than it listed in its bid goes to contract compliance and is a matter for the contracting agency in the administration of the contract and does not affect the validity of the award.
7. Although the successful bidder failed to use the proper production period in the calculation of the evaluation factor for rent-free use of Government property, the contracting agency used the proper production period in its calculation and the successful bidder still remained low so the protester was not prejudiced by the computation in the successful bidder's bid.
8. It is not necessary to consider on the merits allegation that the contracting agency should not have waived first article testing, since, with or without first article testing, successful bidder remains the low bidder.
9. Protester was not prejudiced by successful bidder representing that foreign content in end product is zero where protester contends that two components in successful bidder's end item comprising 30 to 40 percent of the cost of the end item are Canadian, since no evaluation factor is required to be added to the bid where the components are Canadian or where the cost of components which are made in the United States exceeds 50 percent of the cost of all the components.
10. Just because bidder bids the same price for foreign military sales items as it has for other items in the IFB does not mean that the bidder has failed to include in the foreign sales items the compensation

required for the use of Government-furnished production property. Government is not subsidizing cost of foreign sales items, since the contractor is required to pay the rental due the Government for the use of Government property in connection with the manufacture of foreign sales items.

11. Evidence to establish the authority to sign a bid can be presented after bid opening.
12. Protest made after bid opening that option quantity should have been included in the basic bid quantity is untimely, since a protest based on an impropriety in an IFB apparent prior to bid opening is required to be filed prior to bid opening.
13. Whether to exercise an option is a matter of contract administration outside the ambit of the Bid Protest Procedures.
14. Even if the award was contrary to regulation providing for withholding of award while protest is pending, legality of the award would not be affected.

Optic-Electronic Corp. (OEC) protests on a number of grounds the award of a contract to RCA under invitation for bids (IFB) DAAK20-81-B-0044 issued by the Department of the Army.

Based on the following, we deny the protest.

#### Use Authorization

OEC protests that an award should not have been made to RCA because RCA did not comply with the authorization requirement in the IFB for the use of Government production and research property in the performance of the contract to be awarded under the IFB.

Section M.23 of the IFB required that the authorization to use Government property identify the Government property authorized for use, show the Government contract number under which the property is administered, and state that

The authorized use is to be rent free provided an appropriate evaluation factor is added to the bid. OEC contends that the RCA bid was deficient in that the authorization in the bid allowing RCA to use Government property in contract DAAK20-74-C-0270 for the contract to be awarded under the IFB contained no specific identification of the Government property to be used and no evaluation for rent-free use.

OEC is correct in its contention that the letter authorizing the use of Government property in contract DAAK20-74-C-0270 for the performance of the contract to be awarded under the IFB did not list the specific Government property to be used in the contract to be awarded or the evaluation factor to be applied to the bid. The authorization letter merely stated that permission is granted to use the property "shown on the attached list," but there was no list attached to the letter. The RCA bid did list the Government property RCA proposed to use and the evaluation factor to be applied for rent-free use. However, it is not apparent from the authorization letter that the "attached list" has reference to the list in the RCA bid.

Although the IFB did require the authorization to exist at the time of bid opening, it did not require the authorization to be furnished with the bid where it was for the use of Government property in the bidder's possession under an existing contract. Thus, whether the authorization was in fact granted by bid opening for all the Government property on the RCA list could be ascertained by information furnished after bid opening.

In this case, the contracting officer ascertained that the list of property and the proposed evaluation factor for rent-free use attached to the RCA bid had been a part of RCA's request for rent-free use of the property. The contracting officer found that the authorization to use the property on the "attached list" had referred to the list of property RCA had furnished for rent-free approval. Since RCA's request for authorization to use the property listed the equipment to be used and proposed an evaluation factor for rent-free use, the authorization to use the property was substantial compliance, although not exact compliance, with the IFB requirement.

OEC also challenged the authorization to use the Government property in contract DAAK20-74-C-0270 for the contract to be awarded under the IFB on the ground that the contracting officer who issued the authorization lacked the authority to sign the authorization. However, the Army has furnished documentation establishing that the contracting officer was authorized to issue the authorization. Therefore, OEC's challenge is overcome.

RCA also proposed in its bid to use Government property in contract DAAB07-77-C-3298 for the contract to be awarded under the IFB. OEC contends that the RCA bid should have been disqualified because no authorization was provided with the RCA bid for the use of Government property in contract DAAB07-77-C-3298.

However, an hour and a half before the bid opening, the contracting officer, having cognizance of the property in contract DAAB07-77-C-3298 provided written authorization for the use of the property to the contracting officer responsible for the immediate IFB. As indicated above, although the IFB did require the authorization to exist at the time of bid opening, it did not require the authorization to be furnished with the bid where it was for the use of Government property in the bidder's possession under an existing contract.

OEC also protests (1) that only one copy of the identification and evaluation factor documents was submitted by RCA and neither was signed by a company official authorized to sign bids; (2) that RCA's Government property list seemed incomplete; and (3) that RCA failed to use the correct production period of time in its calculation of the evaluation factor that would be added to its bid because of the rent-free use of the Government property.

RCA did furnish only one unsigned copy of the property identification list and the evaluation factor computation. If, as OEC contends, the IFB required that two copies of the property identification list and the evaluation factor computation signed by the company official authorized to sign bids be furnished with the bid, the failure to furnish a second copy and the signature would be a minor informality. Since the bid under which the documentation was furnished was signed, the

absence of a signature on the documentation was an irregularity in form rather than substance. See, for example, 50 Comp. Gen. 71 (1970); 49 id. 541 (1970); 42 id. 36 (1962). The absence of a second copy of the documentation also is an irregularity in form. See, for example, Defense Acquisition Regulation (DAR) § 2-405(i) (1976 ed.).

OEC contends that RCA's property identification list is incomplete because it does not list all the property used by RCA under prior Government contracts with RCA. In effect, OEC is intimating that RCA will be using more Government property to perform under the immediate IFB than it has listed in its bid. Whether RCA complies with the contract resulting from its bid is a matter for the contracting agency in the administration of the contract and does not affect the validity of the award. Nedlog Company, B-204557, September 21, 1981, 81-2 CPD 235.

The Army agrees with OEC that RCA should have used a 25.5-month production period instead of the 10- to 15-month period used in computing the evaluation factor to be added to the RCA bid for rent-free use of the Government property. In evaluating the bids, the Army used the evaluation factor resulting from the Army's computation based upon the 25.5-month production period. RCA remained the low bidder. Thus, OEC was not prejudiced by the computation included in RCA's bid.

#### First Article Testing

OEC protests that the Army should not have waived first article testing for RCA because the procurement history allegedly shows a need for first article testing by RCA. However, with or without first article testing, RCA remains the low bidder. Therefore, it is not necessary to consider this allegation on the merits. General Fire Extinguisher Corporation, B-186954, November 15, 1976, 76-2 CPD 413.

#### Foreign Content

OEC protests RCA's indication in the "Percent Foreign Content" clause included in the IFB pursuant to DAR § 7-2003.81 (Defense Acquisition Circular (DAC) 76-26,

December 15, 1980) that "zero" percent of the proposed contract price represents foreign content or effort. The basis for OEC's protest is that two components in the RCA end item comprising 30 to 40 percent of the cost of the end item are Canadian.

Generally, where a bidder offers a foreign end product an evaluation factor is added to the bid. See DAR § 6-104.4 (DAC 76-25, October 31, 1980). However, no evaluation factor is required where the components are Canadian or where the cost of components which are mined, produced or manufactured in the United States exceeds 50 percent of the cost of all the components, since in those situations the end product is treated as a domestic source end product. See DAR §§ 6-1401, 6-1403.1(c)(3), 6-001.1(c) and (d), and 6-104.4 (DAC 76-25, October 31, 1980). Thus, OEC was not prejudiced by the RCA foreign content representation.

#### Foreign Military Sales

OEC contends that because RCA has bid the same price for the foreign military sales items in the IFB as it has for the other items in the IFB, the foreign military sales items did not include compensation for the use of Government-furnished production and research property in violation of DAR § 13-406 (DAC 76-20, September 17, 1979). OEC contends that the Government therefore is not being compensated for the use of the Government equipment.

Since this is an advertised procurement and no price breakdown is required to be furnished with the bid, the Government has no way of knowing whether RCA included the required compensation in the bid price. Just because the prices for the foreign military sales items and the other items are the same price does not mean that the compensation was not included. It is conceivable that the charge is in the price, but that RCA has made other concessions to keep the prices identical. In any event, RCA is required to pay the rental due the Government for the use of the Government property in connection with the manufacture of foreign sales items. Therefore, the Government is not subsidizing the cost of foreign sales items.

Authority to Sign Bid

OEC protests that there was no evidence furnished with the RCA bid to show that the person who signed for RCA had the authority to act.

Subsequently, RCA furnished corporate documentation confirming that the person who signed the bid was authorized. Evidence to establish the authority to sign a bid can be presented subsequent to bid opening. Aul Instruments, Inc., B-199416.2, January 19, 1981, 81-1 CPD 31; F & H Manufacturing Corporation, B-196161, February 7, 1980, 80-1 CPD 105.

Options

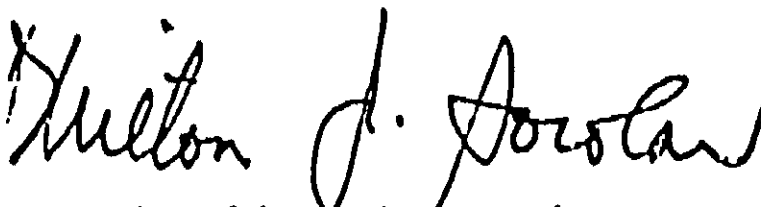
OEC protests that the option quantity should have been included in the basic bid quantity. Further, OEC protests that the Army should not exercise the option in the contract because it would not be in the best interest of the Government.

The first aspect of the protest goes to the propriety of the IFB. A protest based upon an alleged impropriety in an IFB apparent prior to bid opening is required to be filed prior to bid opening. 4 C.F.R. § 21.2(b)(1) (1981). OEC's protest after the opening of bids is untimely.

As to the second aspect of the protest, the decision whether to exercise an option is a matter of contract administration outside the ambit of our Bid Protest Procedures. Oscar Holmes & Sons Trucking Company, Inc., B-197080, January 15, 1980, 80-1 CPD 47.

Award During Protest

OEC contends that the award to RCA was in violation of DAR § 2-407.8 (1976 ed.) providing for the withholding of award while a protest is pending. It is not necessary for us to consider this contention, since, even if the award was contrary to DAR § 2-407.8, its legality would not be affected. Aul Instruments, Inc., supra.

for   
Comptroller General  
of the United States